

**PROBATE & ESTATE PLANNING SECTION**  
Respectfully submits the following position on:

\*

**SB 0558, SB 0559, and SB 0560**

\*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,473.

The position was adopted after electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

**Report on Public Policy Position**

**Name of section:**

Probate & Estate Planning Section

**Contact person:**

Marguerite Munson Lentz

**E-Mail:**

[mlentz@bodmanlaw.com](mailto:mlentz@bodmanlaw.com)

**Bill Numbers:**

SB 0558 (Jones) Probate; other; dower rights; repeal. Amends 1846 RS 66 (MCL 558.1 - 558.29), by adding sec. 30 & repeals secs. 2931 & 2933 of 1961 PA 236 (MCL 600.2931 & 600.2933).

SB 0559 (Jones) Family law; marriage and divorce; requirement that judgment of divorce contain provisions regarding wife's dower rights; eliminate. Amends sec. 1 of 1909 PA 259 (MCL 552.101).

SB 0560 (Jones) Probate; wills and estates; reference to dower in estates and protected individuals code; revise to reflect abolition of dower. Amends secs. 1303, 2202, 2205 & 3807 of 1998 PA 386 (MCL 700.1303 et seq.).

**Date position was adopted:**

October 12-15, 2015

**Process used to take the ideological position:**

Position adopted after electronic discussion and vote.

**Number of members in the decision-making body:**

23

**Number who voted in favor and opposed to the position:**

20 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote (absent)

**Position:**

Support

**Explanation of the position, including any recommended amendments:**

Support the passage of SB 558, 559, and 560.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://legislature.mi.gov/doc.aspx?2015-SB-0558>

<http://legislature.mi.gov/doc.aspx?2015-SB-0559>

<http://legislature.mi.gov/doc.aspx?2015-SB-0560>

## **Probate and Estate Planning Section of the State Bar of Michigan**

### **SUPPORT FOR SB 558 (S-1), SB 560 (S-1), and HB 5520**

Testimony provided by:

Marlaine Teahan, Vice-Chair, Probate and Estate Planning Section of the State Bar of Michigan  
Fraser Trebilcock, 124 W. Allegan, Suite 1000, Lansing, Michigan  
517-377-0869, mteahan@fraserlawfirm.com

---

Good afternoon. My name is Marlaine Teahan. I am the Vice-Chair of the Probate and Estate Planning Section of the State Bar of Michigan. I am here today to respectfully support Senate Bill 558 (S-1), Senate Bill 560 (S-1), and House Bill 5520.

I thank the Chair and the members of this Committee for allowing me time to present the position of the Probate and Estate Planning Section.

#### **Public Policy Position - Background**

The Probate and Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate and Estate Planning Section only and is not the position of the State Bar of Michigan. To date, the State Bar does not have a position on this matter.

As of October 12-15, 2015, when we adopted our position, the total membership of the Probate and Estate Planning Section was 3,473.

The position was adopted after electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor of this position was 20. The number who voted opposed to this position was 0.

#### **Public Policy Position - Support for SB 558, SB 560, and HB 5520**

We support these bills. It is important to note, that our position was taken prior to passage by the Senate of these bills. I have reviewed the substitute bills for Senate Bill 558 and Senate Bill 560. The only addition to the bills since we took a position is the effective date; therefore, our support extends to the substitute bills for Senate Bills 558 and 560. Further, our public policy position statement also expressed support for Senate Bill 559. The text of House Bill 5520 appears to be identical to Senate Bill 559; our support, therefore, extends also to House Bill 5520.

#### **No amendments suggested**

In taking our position, we support the Bills as written. We do not recommend any amendments.

### Rationale for our support

Our written public policy position did not provide an explanation for our support. Based upon many discussions, our support is based, in part, on the following:

- ***The concept of dower is archaic.*** Dower is the use during a widow's natural life of 1/3 of all the lands her husband owned during the marriage, as an estate of inheritance, unless the widow is legally barred from receiving dower. Michigan is the only state that offers such a right to only women. The time has come to repeal dower and update Michigan law.
- ***Abolishing dower will make Michigan's law uniform with other states.*** The Uniform Law Commission promotes uniformity of law among the states on subjects as to which uniformity is desirable and practicable. The Uniform Probate Code abolished the estates of dower and curtesy (which provided similar rights to men in the estates of their deceased wives). Abolishing dower will modernize our laws and make them consistent with other states. Given society's increased mobility, uniformity of laws with other states is desirable.
- ***Dower won't be missed.*** Dower is rarely ever elected by widows in the probate estates of their deceased husbands. In a straw poll of over 50 attorneys attending a recent Probate and Estate Planning Section meeting, only 2 or 3 indicated that they have ever had a case involving dower. So few widows elect dower since the other choices, such as abiding by the will or electing an intestate share, typically result in the widow receiving more assets than electing dower. Dower is probably rarely chosen by widows anymore since most women are not married to land barons; thus, electing 1/3 of the rents of the lands owned in the marriage by their husbands is no longer the financially best result.
- ***Obergefell makes the application of dower impossible.*** The Supreme Court's 2015 decision, *Obergefell v. Hodges*, made same sex marriages legal in all 50 states. Now, the application of dower is impossible. To whom should it apply? Only to same sex marriages involving women? Would either wife get to elect dower at the death of the other? Is it fair to same sex couples involving men to not have the same right to elect dower as women? The answers to these questions seem obvious: dower does not work in a post-Obergefell world and should be abolished.
- ***Abolishing dower will provide needed certainty in the law.*** As a practical matter, given the uncertainty of the law of dower, post-Obergefell, abolishing dower will simplify legal drafting. Without abolishment, attorneys will address the release of dower in countless legal documents, by not only women married to men, but also by all same sex married individuals, regardless of gender. The time and energy spent on addressing dower, post-Obergefell, and the many legal documents that will be drafted to release dower just in case dower applies to that situation, is time wasted on an antiquated concept whose time has come for abolishment.

On behalf of the Probate and Estate Planning Council of the State Bar of Michigan, we support Senate Bill 558 (S-1), Senate Bill 560 (S-1), and House Bill 5520.